

Construction Primer

**Local Law 11 getting you down? Does your building need repairs?
Here's what you need to know.**

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Quick, what costs you thousands of dollars, generates lots of paperwork, and comes around every few years with the regularity of a proverbial bad penny?

ANSWER: LOCAL LAW 11/98.

This is the season to start preparing for it. Although summer is in the air, fall and winter are just around the corner – and that's when a board must start making plans for inspections and work to be performed in the spring and summer of 2012. Most board members and many managing agents have little knowledge of the legal requirements other than knowing that they have to hire an architect or engineer to inspect the exterior of the building and it may cost a lot of money. But what you don't know can hurt you.

Knowing the Law

First, what do you need to know about Local Law 11/98? It is a rule that requires a report to be filed every five years specifying any unsafe conditions. (Although those conditions must be repaired within 30 days, the New York City Department of Buildings, or DOB, will grant a 90-day extension.)

Coverage. The first thing you have to do is determine whether the law covers your building. The law applies to buildings that are “more than six stories” above ground. It is not based upon the height of the building. Owners of designated buildings must hire a Qualified Exterior Wall Inspector (QEWI) with at least a year of professional experience, a New York State registered architect, or a New York State licensed professional engineer to inspect the exterior walls and parapets. They will examine your building using high-powered binoculars while standing on the street, or a building across the street, or an adjacent building, or a hanging scaffold. (Scaffold drops can cost from \$1,500 and up each depending on the size of the building and the number of drops required.) After the inspection, the QEWI has to file a report with the DOB.

When do you file? That determination should be fairly easy

because your building should have been filing reports for many years if it was constructed before February 21, 2002. You can obtain the information from the DOB website for your building or a QEWI, or an expeditor can find out for you. An expeditor is a person who goes to the DOB to file necessary applications for QEWIs and obtains building permits and documents.

Building Inspections

QEWI. The next thing you have to do is hire a QEWI with experience in inspection and exterior repairs of buildings to inspect your building. This will cost about \$1,500 depending on the size of the building and the professional stature of the QEWI retained. The law obligates the QEWI to list all unsafe conditions found during the inspection in his report.

“Unsafe conditions” means anything that could fall off. Examples include loose bricks where the mortar has deteriorated, loose terra cotta and metal anchors, flower planters, and pieces of wood used to support window air conditioners. Your goal should be to get the necessary repairs done so they will last 10 years.

Bridges. The law obligates the building to erect sidewalk scaffolding immediately if the QEWI finds that there are unsafe conditions. The time limit to repair must be met or you

must obtain a further extension. Non-compliance means a fine.

Scaffolding is expensive. It is based upon the number of feet of scaffolding on the sidewalk needed, so the bigger the building's frontage and exposed walls, the more it costs. You pay an upfront fee of \$10,000 to \$15,000 to have it installed. After three months, you pay monthly rental fees based on the footage. The scaffolding also has to extend in front of adjacent buildings by law. The building should contract with the scaffold contractor directly to avoid a markup of 15 to 20 percent.

Doing the Work Now – and Paying for It

Because the initial installation fee is so high, it pays to do all the work necessary, even if you have to stretch to pay for it all. You don't want to have to spend another \$10,000 to install scaffolding in three years.

But how do you pay for the work? Some buildings have substantial reserve funds and can write a check in full. Others have National Cooperative Bank (NCB) mortgages. There are at least two good things about NCB mortgages: they are exempt from the payment of mortgage recording tax, and NCB often establishes a reserve fund for repairs in the mortgage, determining what repairs will be necessary during the term of the mortgage. The building must establish a reserve fund within the mortgage to pay for the repairs. The downside is that you have to pay interest on the money even though you haven't used it.

If your building doesn't have the funds available, you have to refinance your mortgage or obtain a credit line. It is often difficult to refinance a first mortgage because many of them have a huge prepayment penalty.

This leaves you with raising the maintenance and/or an assessment to pay for the increased mortgage or credit line or, if no financing is obtained, to pay the cost of the renovation.

Because raising money is often a substantial problem, many buildings elect not to do the work. But it has to be performed during the five-year cycle. This leads buildings to scramble to do the work at the end of the cycle because the next report has to recite that the work from the previous report was finished. If the previous report states that there are unsafe conditions, the QEWI has to file a report stating that those have been repaired.

Filing and Fining. You can file more than one application with the DOB to extend the time to make the repairs if there are unsafe conditions. The extensions are good for 90 days. It is important to file the extension application early. The DOB is slow to issue the approval of the application but fast to give you a violation for not completing the repairs. Thus, if you don't have an approved extension, your building will receive a violation and have to pay someone to attend an Environmental Control Board (ECB) hearing on the violation while you have a pending application for an extension.

Preparing the Specifications

I strongly advise all buildings to retain a QEWI to prepare drawings and specifications for the work. You cannot trust a contractor to prepare the specifications. It is also advisable to pay the QEWI to inspect the work performed by the contractor. If you don't have supervision, you are at the mercy of the contractor.

Bidding the Work. If you don't hire a QEWI to prepare the repair and bidding specifications, bidding is a waste of time. The contractors will all be giving you a proposal to perform different work. There is no basis to compare the prices. The basic rule that most boards believe is the guiding principle is to obtain three bids. In general, I want a decent contractor that will be in business five years from the day the work is completed, will return my phone calls, and will return to the job if there are problems.

The Contract. There are typically two contracts that the co-op or condo

has to sign in connection with a local law restoration project. One is with the QEWI. The other is with the contractor. The former is typically a set of standard forms distributed by the American Institute of Architects stating that the QEWI is not responsible for general construction supervision, just for inspecting the work to verify that it is in accordance with the building code and the plans and specifications that the QEWI prepared. The latter states that the contractor "controls the means and methods of construction." In other words, the contractor is responsible for determining the method of construction, staffing the job, and seeing that the job gets done quickly. Speedy work can be a problem, and the managing agent or the QEWI often has to prod the contractor to get the job moving.

Doing the Job

You are now ready for the contractor to do the work. The building permit and other permits that a contractor has to obtain to use hanging scaffolding must be displayed by the front entrance to the building. One important permit that has to be displayed is a CD-5. If the contractor doesn't have the proper documents on display or his men don't have proper licenses or the contractor's insurance on file with the DOB has expired, a DOB inspector will issue a stop work order and shut down your job.

Construction work often takes longer and costs more than expected. Many board members become exasperated with the length and difficulty. Sometimes the delay arises because the contractor has not adequately staffed the job. Other times, the building runs out of money to pay the contractor. Often, hidden conditions in the building or inclement weather slow down the work.

Winding Up

The end of the job has finally arrived. The scaffolding can be removed from around the building. The contractor removes his equipment from the building. The roof doesn't leak anymore. Deteriorated masonry has been fixed on the walls. There are no leaks from the walls during heavy rains. The hanging scaffolds are gone. The walls

have been cleaned. The colors of the building are now visible. The exterior of the building sparkles. The residents are happy that the construction process is over.

There are a few more things that must be done. The QEWI has to file his final report certifying that the work has been completed and all hazardous conditions have been removed with the DOB. Your managing agent has to do what is necessary to remove any violations of record. Then you can start preparing for the next project. When you are an owner, the work never ends. ■